INDEX

CITATIONS

661948—45——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 143

LAKE LUCERNE PLAZA, INC., A CORPORATION,
PETITIONER

v.

CHESTER BOWLES, AS ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. Its findings of fact and conclusions of law are set forth on pages 107 to 110 of the record. The opinion of the Circuit Court of Appeals (R. 116–122) is reported in 148 F. 2d 967.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 14, 1945 (R. 122). A peti-

tion for rehearing was denied on May 17, 1945 (R. 129). The petition for certiorari was filed on June 21, 1945. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a court in which a suit is brought to enforce compliance with an order establishing maximum rents issued under the Emergency Price Control Act of 1942 as amended may refuse to enforce the order because it considers it to be invalid.

STATUTES AND REGULATIONS INVOLVED

The action involves the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. IV, Sec. 901 *et seq.* hereinafter referred to as the Act), as amended by the Stabilization Extension Act of 1944 (58 Stat. 640), and two regulations issued thereunder, Maximum Rent Regulation No. 55 (7 F. R. 8731) and Revised Procedural Regulation No. 3 (8 F. R. 526). The pertinent provisions of each are set forth in the Appendix.

Pursuant to the Act, the Administrator on October 27, 1942, issued Maximum Rent Regulation No. 55 (7 F. R. 8731) [1] prescribing the maximum

[1] All maximum rent regulations for housing accommodations other than hotels and rooming houses (including Maximum Rent Regulation No. 55) were consolidated into one

rents which may be charged after November 1, 1942, for housing accommodations (other than hotels and rooming houses) within Orlando Defense Rental Area consisting of Orange County, Florida. It provides that the maximum rent for newly constructed housing accommodations first rented after October 1, 1941, shall be the first rent charged therefor (Sec. 4 (b) and 4 (c)) subject to the power of the Rent Director for the Defense Rental Area, on his own initiative or on the petition of a tenant, to order a decrease thereof, if the first rents charged are higher than the rent generally prevailing on October 1, 1941, for comparable housing accommodations (Secs. 5 (c), 13 (3)).

Any landlord affected by any order of a Rent Director of a Defense Rental Area reducing maximum rents is entitled under the provisions of Revised Procedural Regulation 3 (8 F. R. 526) to appeal from such order to the Regional Administrator for the region within which the defense rental area is located (Secs. 1300.209 and 1309.210), and, if dissatisfied with the action taken by the Regional Administrator, to file a protest with the Price Administrator in accordance with Section 203 of the Act.

The Act provides two methods whereby the validity of any order or regulation may be judi-

---

master "Rent Regulation for Housing" (8 F. R. 7322) effective June 1, 1943. No change in any of the substantive provisions of any of the regulation was made by the codification.

cially reviewed. First, any person subject to any such order or regulation may file a protest with the Administrator setting forth his objections thereto (Sec. 203). If the protest is denied in whole or in part he may file a suit in the Emergency Court of Appeals (established by Section 204 (c) of the Act) to enjoin or set aside the order or regulation.

Secondly, any court in which an action is pending to enforce such an order or regulation may after judgment, on application of the defendant grant leave to the defendant (without first filing a protest with the Administrator) to file a suit in the Emergency Court of Appeals to enjoin or set aside the order or regulation, and stay enforcement of the judgment pending determination of that suit. If the Emergency Court of Appeals holds the order or regulation invalid then the judgment in the enforcement proceeding must be vacated, and the proceeding dismissed (Sec. 204 (e)).

In either case, the order or regulation may be set aside if arbitrary, capricious or not in accordance with law.

No court other than the Emergency Court of Appeals and the Supreme Court in review of judgments of that court has power or jurisdiction to consider the validity of any such order or regulation (Sec. 204 (d)).

STATEMENT

Petitioner, a Florida corporation, is the owner of thirteen newly constructed housing accommodations, within the Orlando Defense Rental Area, which were first rented after October 1, 1941. The first rents charged for such housing accommodations are set forth in column A in the Table copied in the margin [2] (R. 22). On June 29, 1943, the Rent Director of the Orlando Defense Rental Area, after notice to Petitioner, by thirteen separate orders, reduced the rents to the amounts set forth in Column B of the aforesaid table (R. 52, 55). Petitioner appealed to the Regional Administrator who affirmed the Rent Director's orders (R. 3, 15, 19). Thereafter petitioner filed a protest with the Price Administrator. While the

[2] Table:

	Column A First rents	Column B Rents as fixed by Area Rent Director's Order June 29, 1943	Column C Rent as fixed by Administrator Feb. 29, 1944
Apt. 2A	$150.00	$72.50	$110.00
Apt. 2B	250.00	80.00	110.00
Apt. 3B	110.00	72.50	110.00
Apt. 5A	85.00	65.00	85.00
Apt. 5B	110.00	75.00	100.00
House 6	150.00	80.00	75.00
Apt. 7A	175.00	65.00	90.00
Apt. 7B	227.00	75.00	100.00
Apt. 8A	85.00	75.00	85.00
Apt. 8B	85.00	65.00	80.00
Apt. 9A	125.00	82.50	115.00
Apt. 9B	128.00	45.00	70.00
Apt. 9C	75.00	45.00	65.00

protest was pending, an agreement was reached between the Rent Director and Regional Administrator on the one hand and the petitioner on the other, that the rents should be fixed at the amounts set forth in Column C of the table above mentioned (R. 79). Petitioner thereupon withdrew its protest on the condition that the rents agreed upon should be made retroactive to the date of the Rent Director's original orders of June 29, 1943 (R. 89). The Price Administrator advised petitioner that the new rents could not be made retroactive; that the decision on petitioner's protest would be expedited in the event it no longer desired to withdraw it; and that petitioner might have until February 16, 1944 within which to submit evidence in support of its protest (R. 100–103). On February 29, 1944, the Price Administrator entered an order granting petitioner's protest in part and establishing the rents at the amounts shown in Column C of the above mentioned table (R. 20–22). The order recited "insofar as further relief is requested, the protest should be denied" and that it was "issued and effective this 29th day of February 1944."

Thereafter petitioner commenced actions against several of its tenants to recover the difference between the rents they had paid prior to the order granting the protest and the rents established by that order (R. 23–28). Thereupon the Price Administrator commenced this action to restrain petitioner from doing so (R. 1). Cf. Sec.

4 (a) and 205 (a) of the Act. Petitioner filed an answer (R. 30) and a motion to dismiss (R. 42). The cause was submitted on the pleadings and a stipulation (R. 95).

The district court held that the rent director's orders of June 29, 1943 were illegal and superseded as of the date of their issuance by the Administrator's order of February 29, 1944 (R. 108). Accordingly, it dismissed the complaint.

On appeal the Circuit Court of Appeals held that the Administrator's order of February 29, 1944 had the effect of terminating the rent director's orders of June 29, 1943, leaving them in effect for the period from June 29, 1943 to February 29, 1944, and that the validity of the rent director's orders could not be considered either by the district court or by the Circuit Court of Appeals (R. 116–121). Accordingly, it reversed the judgment and remanded the cause for further proceedings.

ARGUMENT

1. The only question of any importance presented by the petition is whether a court in which a suit is brought to enforce a regulation or order establishing maximum rents may consider the validity of the order or regulation. That question has already been answered in the negative by the decisions of this court. *Bowles* v. *Willingham,* 321 U. S. 503; *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Seminole Rock*

661948—45——2

& Sand Co., decided June 4, 1945, No. 914, 1944 Term. No reason exists, therefore, which would justify granting certiorari in this case.

It is true that petitioner does not contend that the regulation under which the rent reduction orders were issued was or is invalid, but only that those orders are invalid. The provisions of Section 204 (d), however, which bar all courts other than the Emergency Court of Appeals (and this Court in reviewing the judgments of that court) from considering the validity of orders and regulations establishing maximum rents and prices extends not only to orders and regulations of general applicability but also to orders or regulations affecting only one or a few. *Bowles* v. *Willingham, supra; Bowles* v. *Meyers,* 149 F. (2d) 440 (C. C. A. 4); *Bowles* v. *Penn-Harris Hotel Co.,* 58 F. Supp. 432 (M. D. Pa.). These provisions apply whether the attack is upon an order *in toto* or upon the validity of an order in so far as it fails to grant a petitioner retroactive relief.

Bowles v. *Willingham, supra,* involved as does this case an order decreasing rents on specific housing accommodations. In addition to questions as to the constitutionality of the Act and the power to enjoin proceedings in a state court, objections were raised with respect to the rent reduction order. As to these, this Court said (321 U. S. 521): "Other objections are raised concerning the regulations or orders fixing the

rents. But these may be considered only by the Emergency Court of Appeals on the review provided by § 204. *Yakus* v. *United States, supra.*" Furthermore, petitioner's attack on the rent reduction orders is in fact an attack upon the regulation itself. The regulation provides that the maximum rent for any housing accommodations first rented after October 1, 1941 shall be the first rent charged therefor unless and until changed by the Area Rent Director. When the Area Rent Director made an order establishing the maximum rents for the housing accommodations, they became the rents presented by the regulation to the same extent as if they had been specifically written into the regulation itself.

2. The fact that whether an injunction should issue to enforce compliance with orders and regulations establishing maximum rents rests in the sound discretion of the court, does not justify the court in refusing to issue an injunction solely because the court believes the order or regulation to be invalid. *Bowles* v. *Meyers, supra; Bowles* v. *NuWay Laundry Co.,* 144 F. (2d) 741 (C. C. A. 10). Any other rule would destroy the statutory plan for restricting judicial review of maximum price and rent orders and regulations to a single forum. Contrary to petitioner's contention, the decision of the court below is in no way in conflict with *Hecht Co.* v. *Bowles,* 321 U. S. 321 and the other cases cited by petitioner. Those cases merely stand for the proposition that equita-

ble considerations arising out of an attempt to comply with maximum price and rent regulations may convince a court that an injunction should not be granted. They do not stand for the proposition that a court may refuse to grant an injunction because it is of the opinion that the order or regulation sought to be enforced is invalid.

3. If petitioner believed the rent reduction orders to be in whole or in part arbitrary, capricious, or otherwise invalid, then its remedy would be to apply to the court, after judgment, to stay the proceeding while it proceeded to test the orders in the Emergency Court of Appeals in accordance with the provisions of Section 204 (e) of the Act. Petitioner has not seen fit to pursue that remedy.

CONCLUSION

The decision sought to be reviewed is clearly right and not in conflict with any decision of this court or any other federal appellate court. The petition should therefore be denied.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.

DAVID LONDON,
Chief, Appellate Branch.

ALBERT M. DREYER,
Attorney, Office of Price Administration.

AUGUST 1945.